



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Health (State Board of)
VAC Chapter Number:	12 VAC 5-501 (replacing Chapter 500)
Regulation Title:	Rules and Regulations Governing the Construction of Migrant Labor Camps
Action Title:	Repeal and Adopt
Date:	January 27, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed Rules and Regulations Governing the Construction of Migrant Labor Camps will establish minimum criteria for the construction of migrant labor camps in Virginia. These regulations reference federal regulations that the Department of Health is responsible for enforcing. These regulations include the procedure for obtaining a permit to construct and a permit to operate a migrant labor camp. These regulations also establish minimum construction standards for water supplies serving migrant labor camps, requirements for the collection and disposal of trash and garbage, and storage of hazardous materials.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Board of Health is authorized by § 32.1-211 of the *Code of Virginia* to adopt regulations governing migrant labor camps. Such regulations may include, but need not be limited to, standards governing:

1. The sites of camps.
2. The provision of an adequate and convenient supply of pure water as defined in § [32.1-167](#).
3. The disposal of sewage as defined in § [32.1-163](#).
4. The storage and disposal of solid waste.
5. The maintenance of the campgrounds.
6. The construction, maintenance, alteration or remodeling of buildings and structures for the housing of migrant workers and their families, including wash and bathrooms, central cooking facilities, central dining rooms, sleeping quarters, assembly rooms, lighting and ventilation.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulations is to ensure that safe and healthy living conditions are provided for migrant workers and their families while they are employed and living in the Commonwealth.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The proposed regulations will update the current regulations. Due to the nature and extent of the changes, particularly a re-organization of the regulations, the existing regulations will be repealed and a new set of regulations adopted.

The key proposals from the existing regulations include requiring only those migrant labor camps that provide water via their own well, and meet the definition of a waterworks as found in the Virginia Waterworks Regulations and in § 32.1-167 of the Code of Virginia, to construct the well in accordance with the Virginia Waterworks Regulations. Those migrant labor camps that have their own wells but do not meet the definition of a waterworks, well must meet the construction standards of the Private Well Regulations. However, the quality of the water will have to meet the quality standards of the Waterworks Regulations.

Another significant proposal is elimination of provisional permits. Provisional permits were once issued to camps that did not fully comply with the regulations but the deficiencies were such that public health was not at risk. The permits were usually issued contingent upon the camp being brought into total compliance. The Federal Department of Labor and Industry does not recognize provisional permits and have levied fines for camps that had only provisional permits. This change will both protect the camp operator from fines and also better protect the camp residents as the camp must fully meet the regulations before they are allowed to occupy the camp. This change is supported by both camp operators and some migrant advocacy groups.

Finally, the requirement for bi-weekly inspections is being removed. Bi-weekly inspections, regardless of the compliance record of a migrant labor camp, impose a burden on both the operator and the Department. Camps will still have to comply with the regulations but the Department will have the flexibility to inspect them as frequently as necessary to ensure compliance. This will allow us to focus inspection efforts on those camps with less than adequate compliance histories. All other changes are for clarity and uniformity with other department regulations.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage of the regulations to the public is that they will update the current regulations to more modern requirements and reflect changes in other laws or regulations that impact migrant labor camps.

The regulations will also eliminate provisional permits that, if issued, subjects the camp owner to fines from the U.S. Department of Labor and Industry as they do not recognized the validity of provisional permits. By removing provisional permits, owners will no longer be subject to these fines and public health of the migrants living in the camps will be better protected as camps will have to fully comply with the regulations to receive a permit. This change was requested by members of the Migrant and Seasonal Farmworkers Board who are migrant labor camp owners or represent growers.

The regulations will also eliminate the current requirement for bi-weekly inspections of all camps. Bi-weekly inspections of camps, regardless of the compliance record of the camp, imposes a burden on both the operator and the Department. Camps will still have to comply with the regulations but the Department will have the flexibility to inspect them as frequently as necessary to ensure compliance and the protection of the workers. This will allow the Department to focus inspection efforts on those camps with less than adequate compliance histories. All camps will be inspected during the season of occupancy by workers.

There are no known disadvantages posed by these proposed regulations to the public or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The Department anticipates little or no negative budgetary impact with these regulations. The Department has been conducting inspections of migrant labor camps for many years so this is not a new program.

The migrant industry should not be adversely impacted by the regulations. They participated in the drafting of the regulations and they support their amendment. In fact, three changes to the regulations will have positive impacts on the migrant industry in Virginia. These include more reasonable and less burdensome regulations governing the water supplies of migrant labor camps that do not meet the definition of a public waterworks. Currently, the regulations require all migrant labor camps to be served by a water supply that meets the construction and

bacteriological requirements of the Waterworks Regulations. The proposed regulations will require only those water supplies serving migrant labor camps that meet the definition of a waterworks, i.e., serve 25 or more people, 60 or more days out of the year, to meet both the construction and bacteriological standards of the Waterworks Regulations. Water supplies that do not meet the definition of a waterworks will have to meet the construction standards of the Private Well Regulations but they still must meet the bacteriological standards of the Waterworks Regulations.

The second change that will have a positive fiscal impact on the migrant labor industry is the elimination of provisional permits. The U.S. Department of Labor and Industry does not recognize provisional permits as official permits to operate a migrant labor camp. Owners who are operating under such permits have been issued significant fines. The elimination of provisional permits will eliminate the potential of such fines in the future.

The third major change that will have a neutral or positive fiscal impact is the elimination of bi-weekly inspections. All camps will still have to be inspected and will be inspected before AND during their season of occupancy. However, those camps that consistently are in compliance with the standards will be inspected less frequently than those who are not consistently in compliance. This will allow the Department to focus resources on those camps that are not in compliance.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Description of Changes to Rules and Regulations

Governing The Construction of Migrant Labor Camps

New Section	Current Section	Discussion
12 VAC 5-501-300	12 VAC 5-500-260	The new section requires occupied migrant camps to be inspected as often as necessary to ensure compliance with the regulations. This eliminates the bi-weekly inspection requirement.

12 VAC 5-501-360 12 VAC 5-500-320 New section requires migrant labor camps to be served by an approved water supply. Approved water supply is defined as either a waterworks or a water supply that otherwise meets acceptable standards, i.e., the Private Well Regulations for construction and the Waterworks Regulations for bacteriological quality.

NONE 12 VAC 5-500-220 The proposed regulations do not have a provision for the issuance of provisional permits.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Eliminating the regulations were considered but the regulations were determined to be essential to protect the health of the migrant workers in the Commonwealth. Several migrant advocacy groups would strongly oppose any move to repeal the regulations.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No public comment was received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulations were reviewed by the committee and were believed to be clearly written and understandable by the regulated entities.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulations will be reviewed within three years of their effective date, estimated to be July 1, 2003. Therefore, the regulations would be reviewed by July 1, 2006. The regulations will be reviewed to identify areas that are not clearly written, are burdensome to the industry, or need to be revised due to changes migrant labor concerns.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulations will have a positive impact on migrant families in Virginia. Many migrant workers come to Virginia with their families, some of who will also work, some will not, particularly small children. The regulations will help ensure that the families will live in safe and healthy conditions by setting minimum standards for construction and maintenance of migrant labor camps.